



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,295	09/17/2003	Peter N. Mascia	11696-047001	8833
26191	7590	04/10/2007	EXAMINER	
FISH & RICHARDSON P.C. PO BOX 1022 MINNEAPOLIS, MN 55440-1022			FOX, DAVID T	
			ART UNIT	PAPER NUMBER
			1638	
			MAIL DATE	DELIVERY MODE
			04/10/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**UNITED STATES DEPARTMENT OF COMMERCE****U.S. Patent and Trademark Office**

Address : COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
---------------------------------	-------------	---	---------------------

EXAMINER
----------

ART UNIT	PAPER
----------	-------

20070404

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

Commissioner for Patents

Supplemental Communication to Advisory Action of 21 March 2007

The Advisory Action of 21 March 2007 indicated that the references submitted with the Information Disclosure Statement of 20 February 2007 had not been received. Apparently the references were simply not scanned into the Image File Wrapper at that time, since they are currently available to the Examiner. Accordingly, the Examiner has reviewed the cited references and makes the following supplemental comments:

1. Based on the PLACE database release submitted 20 February 2007, the outstanding written description rejection is hereby WITHDRAWN. Applicant has demonstrated that there were multiple species of the claimed genus (of transcription activators and transcription activator recognition sequences, either plant-derived or plant-functional) available to the skilled artisan at the time of the invention.

2. The enablement rejection is MAINTAINED. While Applicant's references submitted 20 February 2007 have demonstrated that codon optimization was known in the art, the Examiner maintains that said knowledge does not obviate the general unpredictability inherent in the claimed process, which involves not only the expression of transcription activator genes, but which also involves the expression of male and female sterility genes, and the interaction of all three types of genes and gene products.

3. The art rejections are MAINTAINED. The claims do not clearly distinguish "genetic" male sterility from that conferred by a transgene, and the specification does not clearly define "genetic" to exclude "transgenic".

4. The amendment of 20 February 2007 remains NON-ENTERED. The amendment does not materially simplify or reduce issues, since the art and enablement

Art Unit: 1638

rejections are maintained. Further, that amendment raises new issues regarding the introduction of duplicate claims, as stated in the Advisory Action. Even if those duplicate claims were not present, the lack of a reduction of issues does not warrant entry of the amendment submitted after final rejection.

5. The obviousness-type double patenting rejection is MAINTAINED.

6. Applicant has not provided any experimental results, which results might address the enablement rejection or the art rejections (with respect to unexpected results, as applied to the obviousness rejections). The Examiner has raised this issue previously, and thus WILL NOT CONSIDER any experimental evidence submitted in the instant application after final rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fox whose telephone number is 571-272-0795. The examiner can normally be reached on Monday through Friday from 10:30AM to 7:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg, can be reached on 571-272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

April 4, 2007

DAVID T. FOX  
PRIMARY EXAMINER  
GROUP 180-1638

